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Kathleen B. Levitz
Vice President-Federal Regulatory

September 2, 1999

EX PARTE OR LATE FILED

Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351
202 463-4113
Fax: 202 463-4198
Internet: levitz.kathleen@bsc.bls.com

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

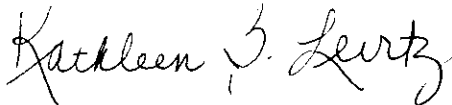
Re: CC Docket No. 96-98

Dear Ms. Salas:

On September 2, 1999, Jonathan Banks, Robert Blau and I, on behalf of BellSouth, met with Sarah Whitesell, Legal Advisor to Commissioner Tristani, and Dorothy Atwood, Legal Advisor to Chairman Kennard. During our meetings we discussed the reasons why the Commission could, as a matter of law, and should, as a matter of policy, impose restrictions on the use of unbundled transport and combinations of unbundled loop and unbundled transport. The views we expressed are already included in our comments, reply comments, and ex partes filed earlier in this docket. We used the attached document during our presentations.

In accordance with Section 1.1206(b)(2), I am filing two copies of this notice in the docket identified above. If you have any questions concerning this, please call me.

Sincerely,



Kathleen B. Levitz

Attachment

cc: Dorothy Atwood
Sarah Whitesell

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List ABCDE

Transport Unbundling and Special Access

CC Docket No. 96-98

Framework for 251(d)(2) Analysis

- 251(d)(2) requires service specific analysis
- Supreme Court requires explicit consideration of alternative network elements
- Supreme Court requires explicit consideration of self-provisioning network elements

Unrestricted Transport Unbundling

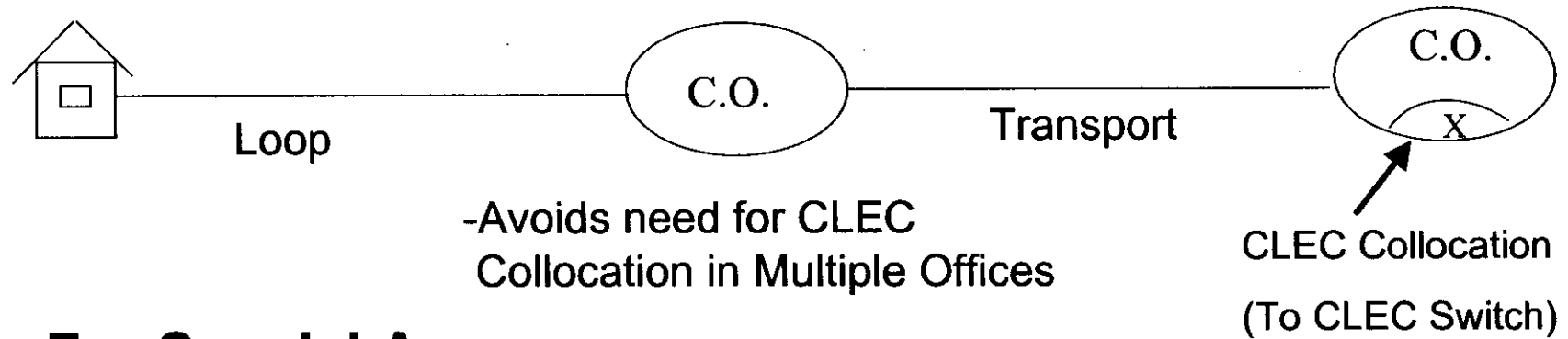
- An outcome with unanticipated harmful effects
- An outcome contrary to Supreme Court's *Iowa Utilities Board* opinion
- An outcome inconsistent with Commission special access policy
- An outcome contrary to sound public policy on local service

An unanticipated harmful outcome

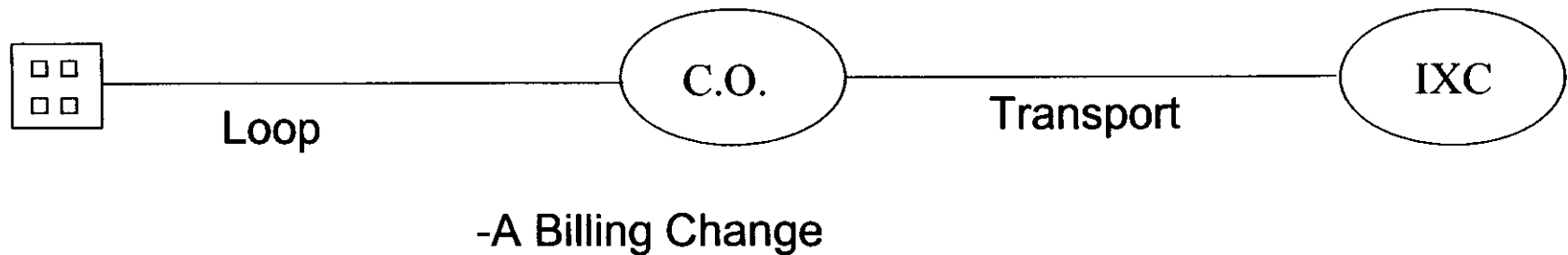
- Unbundling all transport links will require ILECs to make loop/transport combinations ubiquitously available
- By merely requesting a *billing change* IXCs will be able to substitute such combos for special access services
- Such substitution could shift substantial shareholder wealth from ILEC to IXC shareholders -- with no concomitant benefits to consumers or competition
- Substantial universal service support will be lost as switched access users migrate to special access services

Loop/Transport

For Local Exchange



For Special Access



An unreasonably harmful outcome contrary to law, policy and facts

- Unrestricted unbundling contrary to 251(d)(2)
- Unrestricted unbundling inconsistent with Pricing Flexibility Order
- Unrestricted unbundling inconsistent with CAP/CLEC network builds

Special Access Competition

- Began in 1984
- Competitive Alternative Providers (CAPS) emerged after divestiture
- Providers of Special Access to IXC POPs
- Connected to Multiple IXCs
- Multiple CAPs in large metro areas
- Technology adding increased capacity

Competitive Local Exchange Companies (CLECs) Emerge

- CAPS evolve into CLECs with passage of Telecommunications Act
- CLECs expand existing networks and begin to collocate in LEC company offices
- CLEC to CLEC interconnection and collocation beginning to accelerate
- Availability of unrestricted UNEs would debase facility-based CLEC investments

An outcome not compelled by law

- BellSouth has submitted two legal memoranda setting forth why Section 251(d)(2) does not compel such unbundling, particularly for ILEC entrance facilities, when collocation and alternative entrance facilities preexist in and between wire centers and POPs
- BellSouth has submitted a legal memorandum spelling out why prohibiting the use of loop/transport combos to replace existing special access service is permissible under Section 251(c)(3)

An outcome contrary to sound public policy

- A requirement of unrestricted unbundling is as unbalanced as a requirement of no unbundling
 - either ignores the degree to which competition has or has not developed in specific markets
 - shortcomings in the record should not be held against the party lacking the most accurate information

An outcome contrary to sound public policy

- Unbundling of all transport links is not necessary to achieve the Commission's overarching goal of robust local competition
- Unbundling of all transport links has
 - significant
 - unintended
 - unfair
 - unnecessary consequences

Conclusions

- Indiscriminate unbundling of transport links could result in significant harm
- The law, facts and Commission special access policy do not allow indiscriminate unbundling of transport links, in particular the link between a POP and a serving wire center; and such unbundling would not promote local competition